**BEFORE THE**
**FEDERAL COMMUNICATIONS COMMISSION**
**WASHINGTON, D.C.**

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| In the Matter of | ) | |
| Developing a Unified Intercarrier | ) | CCDocketNo. 01-92 |
| Compensation Regime | ) | |

# REPLY COMMENTS
# OF THE MISSOURI
# INDEPENDENT TELEPHONE COMPANY GROUP

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## 1. Introduction

For purposes of these comments, the MITG consists of four Missouri small rural incumbent rate of return LECs[1] that participate in the NECA tariff. Since enactment of the Telecommunications Act of 1996, the MITG has participated extensively, at both the state and federal levels, in regulatory proceedings regarding the overlay of the '96 Act's interconnection and reciprocal compensation regimes onto the existing access regime.

The Commission has received scores of comments from various participants. The MITG is in general agreement with the comments on intercarrier compensation filed by the national groups and other organizations representing small rural carriers such as the National Telecommunications Cooperative Association (NTCA) and the Rural Alliance.

The MITG has first-hand experience with the reduced intercarrier compensation ethic which has pervaded since 1996. The MITG has suffered from "phantom" or unidentified traffic. The MITG has experienced the termination of identified traffic without compensation. The MITG has been forced to litigate disputes as to compensation obligations while SBC and CMRS providers knowingly "transited" and terminated traffic to the MITG without approved compensation arrangements.

In order for "regulated competition" to be effective, it must coexist with the public policies underlying the devotion of privately owned networks to public use. The successful operation of intercarrier compensation for all types of carriers, competitive, price cap, or rate of return, is essential to the deployment and maintenance of advancing telecommunications infrastructure, urban and rural.

[1] Alma Communications Company d/b/a Alma Telephone Company, Chariton Valley Telephone Corporation, Mid-Missouri Telephone Company, and Northeast Missouri Rural Telephone Company.

To this end the MITG encourages the FCC to be comprehensive in identifying all issues raised with respect to intercarrier roles and compensation, and to be complete in addressing them. In several dockets since 1996 the Commission has only resolved a single issue, or subset of issues, and left identified issues for subsequent resolution. This has proven to be most unsatisfactory. The MITG respectfully suggests it would be more efficient for the Commission and the industry to, as much as is possible, preclude the prospect of repetitive litigation during the next decade.

The MITG has chosen to direct its comments to the following particular issues:

A. Rural Alliance Plan Principles

B. Revenue Neutrality

C. No State Preemption

D. Bill and Keep is not Viable for Small Rural Rate of Return ILECs

E. “Virtual” NXXs should not be permitted

F. “Transiting” Parameters should be Adopted

## 2. Rural Alliance Plan Principles

The Rural Alliance (RA) Plan Principles set forth the minimum principles necessary to develop unified carrier compensation rates, based upon actual carrier costs, preserving the statutory requirements of universal service with rural rates in parity with urban rates. It requires all users of private telecommunications networks devoted to public use to pay their fair share of network use, and all providers benefiting from network use to contribute to the Universal Service Fund. It encourages efficient use of networks, and the correct incentives to invest in maintaining and improving current networks. It is technologically neutral.

## 3. Revenue Neutrality

State and federal constitutions prohibit the confiscation of rate of return regulated utility company property by denying them the revenue necessary to achieve a reasonable return on the value of private property devoted to public service. They have invested in this property, own this property, and due to depreciation schedules, amortization schedules, and ratemaking principles have not yet recovered the value of all of this investment, plus a reasonable return. As rate of return small rural ILECs, the MITG are entitled to be assured their present revenue streams will not, in total, be disturbed, unless and until recovery of the investment, plus the return, is realized.

Any action of the Commission in reducing small rural ILEC intercarrier compensation rates, without affording a complete revenue replacement mechanism, would be unconstitutional. With respect to rate of return ILECs, any reductions in intercarrier compensation must and should be "revenue" neutral.

**4. Bill and Keep is not Viable for Small Rural Rate of Return ILECs**

The MITG refers the Commission to the March 10, 2004 National Telecommunications Cooperative Association "white paper" concluding that bill and keep is inappropriate for rural ILECs and their customers. Because rural ILEC revenues are heavily dependent upon originating and terminating carrier revenues, adoption of bill and keep would create excessive revenue displacement for rural ILECs and their customers. Cost shifts between interstate and intrastate jurisdictions would be produced creating upward pressures on those living in and serving rural areas, where costs and usage make them unable to afford to absorb these costs.

**5. “Virtual” NXXs should not be permitted**

CLECs and CMRS providers have attempted to establish a presence in rural ILEC exchanges by obtaining an NPA NXX “rate center” there. However these CLECs and CMRS providers make no attempt to locate facilities in the rural ILEC exchanges. They then not only claim that calls to these “virtual” NPA NXXs are local calls to rural ILEC customers, but also claim that it is the responsibility of the rural ILEC to transport the traffic, at the ILEC’s expense, to the actual facilities location of the CMRS providers and CLECs. In Missouri, particularly with the declining significance of LATA boundaries, the distance between the CLEC/CMRS provider facility and the rural ILEC exchange can be up to 200 miles.

The MITG companies have neither the certificated authority, nor the facilities, nor the financial responsibility to recognize virtual NXXs and transport calls to the actual location of the CLEC/CMRS provider.

The "virtual NXX" gambit of CLECs and CMRS providers does not withstand the common sense test. There has been no demonstration of any valid public policy underlying this virtual NXX gambit. There is no reason a rural ILEC should be responsible to transport its competitors' traffic beyond any point of actual or direct interconnection with the facilities of that ILEC. Missouri Public Commissioner Steve Gaw voiced his reaction:

> [I]t sort of reminds me of a farmer with a horse and another farmer comes over and says, I like that horse, I want that horse. And the farmer says, Well, I-- that's nice. What will you give me for' him? He says, I'm not going to give you anything for him. And, Oh, by the way, I want you to buy a truck and trailer and haul him over to my house for nothing… this scenario asks that local company to pay for the…continuing transfer of that new call and whatever maintenance there is. I guess he's got to pay for the feed and the hay too now that I think about it.[2]

The Commission should reject the anticompetitive and adverse impacts and undue economic burdens that would be imposed by sanctioning "Virtual NXX" scenarios.

## 6. "Transiting" Parameters should be Adopted

There is a real and immediate need for the Commission to quickly resolve issues related to indirect interconnection and the transiting of traffic. The resolution of these issues is long overdue, and the lack of resolution has led to unnecessary conflict, uncertainty, inefficiency and waste. The last 9 years' experience in Missouri has established that attempting to replace the carrier's carrier role with a "transit" role creates the likelihood of disputes that do not occur with the carrier's carrier system. These disputes include the following:

[2] *In the Matter of the Petition of KLM Telephone Company for Suspension and Modification of the FCC's Requirement to Implement Number Portability*, Missouri Public Service Commission Case No. TO-2004-0401, Tr. 67 (questions by Commissioner Gaw).

a. disputes as to providing and passing call information;

b. disputes as to financial responsibility for traffic;

c. disputes as the causes of, and responsibility for, unidentified or "phantom" traffic;

d. disputes as to measuring and recording the traffic;

e. disputes as to what billing record systems to apply;

f. disputes as to whose traffic measurements are to be used;

g. disputes as to where traffic is measured.

The Missouri experience with RBOC SBC indicates the need for the Commission to address and set standards for indirect interconnection or "transit" traffic. Transit service is a service SBC has offered wherein it agrees to transport, but not to terminate, telecommunications traffic originated by CLECs and CMRS providers. SBC originally justified transit on the ground it was required by the 1996 Act to transit local traffic at forward looking reciprocal compensation rates that provided insufficient revenue to cover the payment of termination charges.

Now SBC is providing transit of both local and toll traffic. Now SBC is saying transit agreements are not subject to regulatory approval. Now SBC claims it is not required to transit traffic. SBC indicates it will voluntarily transit local and toll traffic only if it is permitted to charge market based rates, if it is not required to pay terminating compensation, and if the transit agreements are not subject to Section 252 approval.

SBC's transit scheme is administratively inefficient. Just as important, this scheme is not subject to regulatory oversight necessary to assure that such RBOC functions are performed in a non-discriminatory manner, and are in the public interest. It is contrary to sound public policy.

The MITG requests that the FCC reject and disallow the use of "transit" services such as SBC advocates with respect to toll traffic. For toll traffic, SBC is performing the same role as any other interexchange carrier, or "carrier's carrier", and there is no lawful justification for SBC to evade the terminating interexchange carrier's obligation to pay terminating compensation.

The Commission is reminded that interconnection agreements are only intended for local traffic, not for toll traffic. A direct interconnection agreement between <u>two</u> carriers for the reciprocal transport and termination of local traffic is the only type of reciprocal compensation agreement that is expressly recognized by the Telecommunications Act of 1996, and the FCC reciprocal compensation rules.

See 47 CFR 51.701(e), which defines "reciprocal compensation" as an arrangement between <u>two</u> carriers in which <u>each</u> of the <u>two</u> carriers receives compensation from <u>the</u> other carrier for the <u>transport and termination</u> on <u>each</u> carrier's network. This conclusion is supported by the FCC definition of "transport" as the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act from <u>the interconnection point between the two carriers</u> to the terminating carrier's end office switch that directly serves the called party.

Giving the Act and FCC rules a strict construction, the only reciprocal compensation agreements contemplated by the Act are those between two directly interconnecting carriers where each provides transport and termination of local traffic to the other. Under this strict construction the transit service agreement constitutes an inappropriate attempt by SBC to impose "transiting" concepts onto the existing "carrier's carrier" market.

Giving the Act and FCC rules a more liberal construction in light of the duty to indirectly interconnect, the MITG believes that, where all carriers party to an indirect interconnection path agree to exchange local reciprocal compensation traffic over that indirect interconnection path, it is a defendable interpretation to say that in this situation the “transiting” of traffic called for by such an agreement is a Section 251(b)(5) agreement subject to Commission approval.

The MITG directs the Commission to the FCC’s March 12, 2004 decision in FCC 04-57, 19 FCC Rcd 5169, in the Matter of Qwest Corporation Apparent Liability for Forfeiture, wherein the FCC found Qwest liable for a forfeiture of Nine Million Dollars for failing to submit a multitude of agreements to state commissions for approval in violation of §252 of the 1996 Act. Included in the agreements upon which the forfeiture was based were “transit record exchange” agreements. If transit record exchange agreements are subject to § 252 approval, it would seem obvious that transit traffic agreements are also subject to § 252 approval. At paragraph 4 of that decision the FCC, reciting its earlier Local Competition Order, recognized that the filing and approval requirements were necessary for permitting state commissions to assure the terms of interconnection are just, reasonable, and nondiscriminatory.

It makes sense that every agreement by which Section 251(b) (5) local reciprocal compensation traffic is exchanged should be subject to regulatory approval. It is in the act of regulatory approval wherein it is assured that the agreements do not discriminate, and that they are in the public interest. If they are not filed for approval, the regulators have no way to perform its duty.

The MITG has a conceptual problem with SBC's claim that it is entitled to access rates for its transit of local reciprocal compensation traffic. If the call is a local call between the originating and terminating carriers, the function that SBC performs as transiting carrier is "transport" of a local call. This transport would be part of the "transport and termination" essential to reciprocal compensation. The MITG disagrees that SBC would be entitled to access on transport of a local call the originating and terminating carriers would receive reciprocal compensation.

If the Commission determines it will permit three (or more) carrier reciprocal compensation agreements, the price for SBC's transit/transport function must be at local reciprocal compensation rates, and must be subject to arbitration and approval under the Commission's reciprocal compensation standards. If SBC refuses to participate in transiting traffic on this basis, it should not attempt to negotiate any such transit agreements.

With respect to toll traffic, the "transit" relationship SBC proposes should not be permitted. It is clearly inappropriate for toll traffic, yet SBC's transit agreement purports to include toll traffic within its ambit. There already exists a "carrier's carrier" role which since divestiture has successfully handled the transit of toll calls.

The toll "transit" role SBC proposes constitutes an unnecessary and counterproductive deviation from the normal or industry standard "carrier's carrier" role. In its transit agreements SBC refuses to be responsible to pay terminating compensation for toll traffic as carrier's carriers do. This is not appropriate. The Commission should inform SBC that toll transit agreements are not permissible.

SBC's pursuit of an unregulated "transit" role for toll traffic contained in negotiations with carriers that need local reciprocal compensation agreements should be terminated. SBC's unregulated transit role should be rejected in favor of the traditional carrier's carrier regime. The current "carrier's carrier" role (sometimes referred to as an "IXC or "wholesale" role) has been in use since divestiture, and is far superior from a public policy standpoint than SBC's "transit" role.

There are many policy reasons why SBC's proposed toll transiting role should be rejected in favor of a carrier's carrier role. The first is administrative efficiency. In the carrier's carrier regime, the carrier delivering the call to the terminating access tandem is responsible to pay terminating charges for traffic terminating to LECs that subtend that tandem. Traffic measurement and billing records are performed at the terminating tandem. Currently, when AT&T, Sprint LD, MCI, Global Crossings, or another "carrier's carrier" delivers traffic originated by others, they pay the termination charges based on records created at the terminating tandem. Compensation works efficiently pursuant to tariff.

The transiting role SBC advocates requires each carrier connecting with SBC to have separate agreements with *every other* carrier connecting with SBC. It does not rely upon tariffs at the terminating end of a call. Thus, if there are 100 ILECs, CLECs, and CMRS providers connecting with SBC in Missouri, this would require 10,000 separate agreements. Under the carrier's carrier system, even if all 100 connecting carriers chose SBC (as opposed to AT&T, MCI, Sprint LD, Global Crossings, etc.) as their carrier's carrier, only 100 agreements would be required.

Another policy reason is unfair economic advantage. If SBC is allowed to price transit services without being responsible for terminating costs, SBC will have an unfair advantage over traditional IXCs performing carrier's carrier functions. There is no reason to believe SBC isn't just as capable as traditional IXCs in negotiating competitive carrier's carrier rates, and being responsible for terminating compensation. There is no justification for allowing SBC to negotiate on a basis different from that of other carrier's carriers.

It would be unwise to sanction a transit role in this era of increasing dominance of RBOCs over the rest of the industry. RBOCs have facilities dominance. RBOCs have economic and bargaining advantages over CMRS providers, CLECs, and smaller ILECs. The RBOCs are engaged in both horizontal and vertical acquisitions giving them renewed presence in markets they have previously been divested of. Through mergers and acquisitions there are fewer and larger RBOCs with extensive horizontal and vertical integration. Permitting RBOCs to unilaterally create a new "gatekeeping" function for themselves would give these large carriers undue advantage and control over traffic exchange, compensation obligations, call information, and billing record systems.

It is poor policy to remove intercarrier arrangements such as transiting from regulatory oversight. The FCC and state commission have never relinquished oversight authority over carrier-to-carrier relationships. SBC and other RBOCs transport role should be treated the same as any other interexchange carrier. The Missouri Public Service Commission has so held.[3] The failure to retain their roles as that of interexchange carriers would not bode well for equal access and presubscription.

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[3] See the Commission's September 26, 2000 Report and Order in TC-2005-325, et al., Southwestern Bell's Complaint Against Mid-Missouri, Goodman, Seneca, and Chariton Valley, holding that after the end of the

Now is not an opportune time to consider sanctioning a new transit role that fits neither local traffic reciprocal compensation structures nor interexchange carrier structures. The Commission's task is difficult enough now. Transit should be permitted only for local traffic, only if all carriers to the origination, transport, and termination of local traffic enter into an agreement therefore, and the agreement is subject to Section 251(b)(5) and Section 252.

## 7. Conclusion

On the basis of the foregoing, the MITG respectfully suggests that the Commission address all identified intercarrier compensation roles and obligations, adopt a unified carrier compensation plan that is competitively neutral, that is consistent with the principles set forth by the Rural Alliance, that preserves rate of return ILEC revenues, that preserves universal service, that rejects bill and keep, that rejects "virtual NXX", and sets uniform and administratively efficient parameters of permissible transiting.

PTC Plan, as a former PTC SBC was thereafter an interexchange carrier that must comply with Respondents's access tariffs and utilize Feature Group D facilities.

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